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INTERVENTION

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION

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In the Matter of Rules to Address)
Slamming and Other Deceptive Practices)

Docket No. RT-00000J-99-0034

DOCUMENT CONTROL

Application to Intervene and Response
Of Sprint Communications Company L.P.

For its response to U S West's Application in this matter, Sprint Communications Company L.P. ("Sprint") states and alleges as follows:

1. Although Sprint and other long distance providers were not served with a copy of the Application of U S WEST Communications, Inc. ("USW"), Sprint is directly and substantially affected by the subject matter of the application.¹ As a telecommunications provider authorized to provide interLATA, intraLATA and local exchange services on a competitive basis in Arizona, Sprint would be affected by any rules adopted by the Commission concerning the process by which customers change their preferred provider of services. Consequently, pursuant to Commission rule R14-3-105, requests permission to intervene in this matter.

2. Sprint supports continuing development of competition in telecommunications markets to the benefit of consumers. Sprint consequently supports all reasonable efforts to combat slamming. However, Sprint opposes the USW Application for emergency rulemaking because there is no showing of an imminent substantial peril to public health, safety and welfare that needs to be addressed by immediate adoption of the new FCC rules. Further, Sprint does not oppose initiation of a normal rulemaking but suggests that the Commission should await further FCC actions before adopting any rules.

3. It should be emphasized that the FCC rules will become effective within the near future. Most of the rules will be effective 70 days after publication in the Federal Register with those regarding the refund mechanism effective 90 days after publication. Consequently, pursuant to A.R.S §41-1026, USW must show a substantial peril to the public health, safety and welfare during that intervening time² that requires state implementation of the rules prior to their FCC effective date. USW has not done so. It is apparent from USW's Application that USW's purported primary concern is with potential customer confusion concerning the difference between interLATA and intraLATA services. Thus, the Application, at ¶12, alleges that 65% of USW customers changing intraLATA providers were confused, and, at ¶18, accuses AT&T and MCI (but not Sprint) of failing to explain the difference between interLATA and intraLATA and therefore "slamming" customers. These mere allegations, however, are not a real showing of actual problems that must be addressed on an emergency basis. Despite USW's allegations, customer confusion and lack of understanding, although undesirable, are not the same as the deliberate unauthorized switching of customers. A situation involving the latter might be seen as an emergency but the situation involved here surely cannot. Furthermore, even if customer confusion could be viewed as an emergency, there are numerous reasons to doubt the validity and accuracy of the basis for USW's allegations.

4. First, USW's allegations with respect to its polling of customers who have changed intraLATA providers are clearly insufficient. USW has not disclosed to the Commission any

¹ USW has reportedly filed the same application for emergency rulemaking or a similar complaint in eleven of the states in which it provides service.

² This period of time is presumably even less since the Commission could not reasonably order a literal "immediate" adoption of the rules but would have to provide for some time to implement them.

of the information necessary to evaluate the validity of those conclusions.³ Moreover, even USW's own evaluation of its polling data is less than definitive. Although USW claims that 65% of those surveyed were confused about having changed their intraLATA providers, there is no indication whether those customers were actually upset about being wrongfully switched or were merely confused about which services they had changed.⁴ Indeed, USW only suggests that "approximately 25% of those uninformed customers did not want to have their intraLATA carrier changed." Even that 25% figure is suspect since it is based on those customers who switched back to USW after a "win back" contact and because "the data was not collected so as to permit a precise calculation." Application, ¶ 23. USW does not reveal, of course, whether those customers insisted on returning to USW or were induced to switch back through special "win back" pricing of USW services or other marketing tools. Thus, the 25% figure cannot be relied on as a reflection of customers who believed they were inappropriately switched.

5. Similarly, USW presents no real support for its raw allegation that an emergency situation exists due to some IXCs' failures to explain the difference between interLATA and intraLATA services. USW has not shown that there have been increases in slamming complaints in those states that have implemented intraLATA competition. And, with regard to those states, such as Arizona and Minnesota, that have had intraLATA competition for some time; USW has utterly failed to show why there is an emergency now but not for the last three years. Just as A.R.S. §41-1026 does not permit promulgation of an emergency rule

³ For example, USW has provided absolutely no information to this Commission on any of the factors affecting the validity of any poll, such as how the poll was conducted, what specific questions were asked or who conducted the poll. No action should be taken on the basis of the poll without full disclosure and evaluation of such information.

⁴ Information obtained in other states suggests that the questions used by USW would serve to only confuse customers further.

if the emergency situation is due to the agency's delay or inaction, USW should not be permitted to claim an emergency when there has not been a change in circumstances for three years.

6. USW has also neglected to indicate to the Commission why emergency adoption of the FCC rules is the only remedy to the customer confusion problem it alleges. For example, USW does not explain why it cannot engage in its own customer education program to explain the differences between interLATA and intraLATA services.

7. It is thus evident that USW has not shown an emergency need. Rather, USW appears to be engaged in a region-wide campaign to hinder the development of intraLATA competition at a time when intraLATA 1+ pre-subscription is being implemented in states that had not previously required it.⁵ If USW's applications were successful, its competitors would be forced to divert resources to expend considerable effort and money to implement the FCC rules earlier than anticipated. Such implementation would also be less efficient and more costly if it could not occur on a nationwide basis but had to be implemented piecemeal by state. These undesirable results are not, however, justified since USW has no legitimate basis for its requested emergency action.

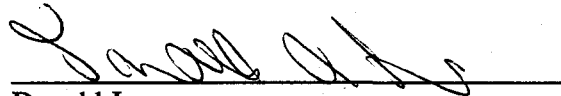
8. Finally, Sprint is not opposed to Commission commencement of a proceeding to consider rules to combat slamming. Although Sprint prefers that it be subject to a single set of national rules regarding customer selection of providers and does not see a need for individual state rules, it understands that the Commission may want to undertake its own evaluation. However, the Commission should await further FCC actions before adopting any rules. The

⁵ Colorado, Nebraska, Montana, Oregon, Washington and Iowa have recently ordered implementation of intraLATA dialing parity pursuant to §271(e)(2)(B) of the Telecommunications Act of 1996.

new FCC rules are subject to reconsideration and the FCC has sought further comments on other proposed rules.⁶ Since there are restrictions on how much state commission rules can vary from the FCC rules, it would be prudent for state commissions to await the final outcome of those FCC proceedings to avoid adoption of inconsistent state rules and the need to amend them.

IN CONCLUSION, Sprint requests that the Commission deny USW's Application for Emergency Rulemaking and that it await further FCC action before adopting permanent rules.

Respectfully submitted,
Sprint Communications Company L.P.



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Certificate of Service

The undersigned certifies that a copy of this pleading was served by mailing a copy by overnight mail to Timothy Berg, 3003 North Central, Suite 2600, Phoenix, Az 85012 on this 12th day of February, 1999.



⁶ Sprint and other carriers will likely ask for reconsideration of the refund mechanisms since they present severe practical problems. Furthermore, Sprint will support the proposal for a Third Party Administrator to handle disputes since it believes that that is the best way to deal with slamming issues.